Supreme Court of the United States

October Term, 1970
No. 1100

BRIDGE CORPORATION OF AMERICA,

Petitioner,

vs.

THE AMERICAN CONTRACT BRIDGE LEAGUE, INC., *et al.*,

Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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IN THE

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October Term, 1970
No. 1106

BRIDGE CORPORATION OF AMERICA,

Petitioner,

vs.

THE AMERICAN CONTRACT BRIDGE LEAGUE, INC., *et al.*,

Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Statement of the Case.

Respondent American Contract Bridge League ("the Bridge League") is a nonprofit organization dedicated to the promotion of the game of contract bridge. [Finding[1] 7.] Two major means used to further this end are its sponsorship of local, regional, and national duplicate bridge tournaments and its maintenance of a national competency ranking of bridge players. [Findings 10-15.] This ranking is accomplished by awarding "master points", based upon the performance of players in its tournaments. [Findings 15-17.] Because the "master point" system is meaningful only if

[1]The relevant Findings of Fact of the trial court are reprinted in Appendix B. The opinion of the Court of Appeals below constitutes Appendix A (references are in the form "A-1"). References to the Petition are in the form "P-1".

the conditions of play are the same in all tournaments, respondent has long been concerned that conditions of play be uniform, and that scoring be accurate and reliable. [Finding 19.]

Since 1959, the Bridge League has actively sought to supplant its manual scoring system for duplicate bridge tournaments with a faster and more accurate computer system, and has approached several major manufacturers of computing machines in an attempt to have such a system developed. [Finding 53.] In 1961, the Bridge League learned that petitioner was working on the problem, contacted it, and over a period of several years made numerous suggestions to petitioner as to modifications which would render petitioner's system more suitable as a scoring device and reduce its interference with standard playing conditions. [Findings 53-54.] Although respondent sought a conclusive test of the system in one of its national tournaments (fall 1963), where its Board of Directors could be present, petitioner refused to demonstrate the device and complained that it could spend no more money on development or testing without financial assistance. [Findings 35-41.]

Prior to the breakdown in relations between petitioner and respondent, petitioner had reached tentative agreement with the Riverside and Redlands, California units of respondent to score their sectional tournament. [Finding 30.] When the Bridge League learned that petitioner was seeking to use at Riverside-Redlands the system which had never been successfully demonstrated to respondent, respondent was unable to sanction the tournament or permit the award of master points there. [Finding 33.] For this reason, the proposed use of the computer system was canceled. [Finding 42.]

Respondent's refusal to sanction a computer-scored tournament was a reasonable decision [Finding 28; A-12] based upon the dubious reliability of the untested system and the uncertain effect which, with its attendant paraphernalia, it would have upon playing conditions. [Findings 46-49.] Respondent was justifiably concerned that use of petitioner's system, in its then state of testing and development, would adversely affect the comparability of conditions of play, which is critical to the integrity and meaningfulness of the Master Point player ranking system. [Findings 48-51.]

Petitioner then filed this suit, which has been in litigation for more than six years and has been twice-considered by the Court of Appeals for the Ninth Circuit. Petitioner's Statement of the Case (P-3-4) contains a detailed history of the litigation, which so far has exonerated respondent of any wrongdoing, either under the Sherman Act, 15 U.S.C. §§ 1-2, or any of petitioner's other theories.

Questions Presented.

1. Whether the Bridge League's refusal to sanction tournaments using petitioner's unproven computer scoring system constituted a boycott, within the purview of the Sherman Act, 15 U.S.C. §§ 1-2.
2. Assuming the League's policy is considered a boycott, whether the Sherman Act is necessarily violated by a boycott which is reasonably employed and which has no anti-competitive purpose or effect.

REASONS FOR DENYING THE WRIT.

I.

The Decision Below Is Not in Conflict With Prior Decisions of This Court.

A. The Conditions Triggering Application of the Per Se Ban on Group Boycotts Are Not Present in This Case.

The Petition (P-5-6) represents that the Court of Appeals disregarded this Court's holdings that concerted refusals to deal by traders are *per se* violations of the Sherman Act. On the contrary, this case involves neither traders, concerted action, nor refusals to deal, at least as that last term has ordinarily been used.

The Bridge League is a nonprofit organization with neither the competency nor the inclination to engage in ordinary commercial activity. It seeks only to promote enjoyment of the game of contract bridge, and insure the integrity of tournaments where the more advanced players may test their skills.

If respondent were an ordinary commercial corporation, or, as is usually the case, a competitor of petitioner, there would be strong reasons for inferring that a conspiratorial exclusion of petitioner from potential customers would be a "naked . . . [restraint] of trade with no purpose except stifling of competition." *White Motor Co. v. United States* (1963), 372 U.S. 253, 263. With regard to practices such as price-fixing, tying arrangements, horizontal divisions of markets, and group boycotts, ". . . experience and analysis have established the utter lack of justification to excuse . . . [their] inherent threat to competition." *White Motor Co., supra*, at 265. (Brennan, J., concurring.)

But it must not be forgotten that the "experience and analysis" which forged the *per se* ban on group boycotts came from cases involving profit-seekers—situations where concerted refusals to deal would rarely, if ever, have a permissible object. As the Ninth Circuit has summarized the boycott cases: "We find that in all of plaintiff's [group boycott] cases there was a purpose either to exclude a person or group from the market, or to accomplish some other anti-competitive objective, or both." *Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Inc.* (9th Cir. 1969), 416 F. 2d 71, 76.

In this case, the District Court found that the Bridge League was actuated by no such motives—but by a perfectly justifiable concern for the accuracy and reliability of petitioner's untested system, and the effect its use might have upon playing conditions. [Findings 46-50.] The inquiry into motivation, which is superfluous for ordinary commercial antitrust defendants, is necessary for organizations which are concerned with goals other than making money. This Court has recognized the important distinction to be made between commercial and noncommercial entities in determining their liability under the antitrust laws:

> "The Court in *Apex* [*Apex Hosiery Co. v. Leader* (1940), 310 U.S. 469] recognized that the Act is aimed primarily at combinations having commercial objectives and is applied only to a very limited extent to organizations, like labor unions, which normally have other objectives."
>
> *Klor's v. Broadway-Hale Stores* (1959), 359 U.S. 207, 213.

The lower court recognized that application of the *per se* rule of illegality should be limited to those situa-

tions where this Court has indicated its application is proper. Here, the Court of Appeals correctly concluded "[W]e do not find that the underlying considerations of the *per se* unreasonableness rule are present in this case. . . ." (A-10) Accordingly, the lower court investigated the reasonableness of respondent's policy and vindicated it. Such an inquiry is dictated by this Court where conduct does not fall within one of the *per se* proscriptions.

Standard Oil Co. v. United States (1910), 221 U.S. 1;

Chicago Board of Trade v. United States (1917), 246 U.S. 231;

White Motor Co. v. United States, supra, at 261.

The lower court's decision thus is not inconsistent with doctrine of this Court and does not call for review. See Supreme Court Rule 19.

Not only is this a case where the *per se* rules are inapposite because of the noncommercial character of respondent, but also there has been no finding of the requisite concerted action. Petitioner seeks to assume this important element of a violation (P-6), but there has been no determination whether the League is an association of quasi-autonomous local units, or whether the local units are merely local agents of a unitary national organization. [Finding 9.] In the view which the lower courts took of the case, there was no necessity to resolve this question. Petitioner seeks to assume it in order to force the facts into the only mold which helps its argument. Yet there can clearly be no group boycott without a group, nor concerted action without separate entities to act in concert. If indeed respond-

ent is a unitary organization, wholly different standards must be applied to assess its conduct. *United States v. Colgate & Co.* (1919), 250 U.S. 300. A unilateral refusal to deal is ordinarily legal unless accomplished by unlawful means or for a monopolistic purpose. *United States v. Colgate, supra; South End Oil Co. v. Texaco* (N.D. Ill. 1965), 237 F. Supp. 650.

Petitioner's attempt to treat this case as an objectionable group boycott or concerted refusal to deal suffers from a final flaw. There has been no refusal to deal, at least as that term is commonly used. Petitioner and respondent simply failed to reach agreement—the Court of Appeals incorporated the following assessment by the Trial Court into its opinion:

> " 'THE COURT: It resolves itself down to this: I don't think the defendant has ever been given a fair opportunity to deal. Now you have presented it with a revolutionary device which requires a considerable amount of revision on the part of the defendant's procedures in order to make use of this device. It has to do with the calculation or the determination of these honor awards which are the essence of the defendant's system. In order to maintain the integrity of that system it is only right and proper—and they certainly have the duty—to see that any scoring device is carefully analyzed and carefully studied and that no system be adopted until it has been proven to somebody's satisfaction, to their satisfaction, reasonable satisfaction, I might say, that it can operate in a fair and just fashion.
>
> " 'I am not sure the evidence even establishes that the device can do the work as completely as you seem to think it can. But assuming it does do

this calculation fast, in a beneficial way and with an accurate result, nevertheless the defendant's agents have to be given an opportunity to test it out and they have to be convinced that it can be used properly to produce a proper result.

"I don't think you have given them an opportunity to make that full and complete test or to satisfy themselves.

"You never quite got together. I don't remember that they have ever actually refused to give you an opportunity to demonstrate it. You just could never get together at a convenient time.

"You have taken that refusal to review a demonstration at a time not convenient to them as a complete and unconditional refusal to do business with you. I don't interpret the evidence that way at all. (Tr. 834-35)." (A-7-8).

Respondent's "boycott" is totally unlike the exclusionary combinations condemned in the cases cited by petitioner. There was no intent to drive a competitor out of business (*Fashion Originators' Guild v. F.T.C.* (1941), 312 U.S. 457; *Klor's, Inc. v. Broadway-Hale Stores, Inc.* (1959), 359 U.S. 207; *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.* (1961), 364 U.S. 656); no attempt to support prices or destroy competitors of customers (*United States v. General Motors Corp.* (1966), 384 U.S. 127); no arbitrariness or procedural unfairness in the League's action (*Silver v. New York Stock Exchange* (1963), 373 U.S. 341).

Ordinary boycotts seek to coerce or destroy a vulnerable trader by denying his otherwise competitive product access to the market; respondent had no ul-

terior motive—only to protect its tournaments from the uncertain and probably detrimental impact of a novel and untested scoring device. [Findings 46-51.] The Court of Appeals rightly recognized that application of the *per se* ban to respondent's conduct would be, in effect, a holding that entities like respondent, which require centralized policy-making on certain questions, would be unable to run their affairs even by the most reasonable of regulations.

B. The "Reasonableness" Standard Was Properly Applied to Respondent's Conduct.

Since, as demonstrated above, respondent's acts cannot be illegal *per se*, the courts below properly applied the "rule of reason" in balancing the restraint upon competition occasioned by respondent's acts with the need that such steps be taken to preserve the Bridge League's legitimate goals and functions. The Court of Appeals had no difficulty in concluding that respondent had acted reasonably and within the limits permitted by the Sherman Act. (A-11-12). It is submitted that this Court should conclude that the case is not worthy of further consideration.

II.

This Case Is Factually Inappropriate as a Vehicle for Considering the Proper Application of the Anti-Trust Laws to Noncommercial Associations.

Petitioner suggests (P-10-11) that this case is one of those now pending before this Court which raises important questions concerning the application of anti-trust laws to the "exclusionary" activities of noncommercial associations. It is submitted that the facts in this case are not suitable for such a characterization. As demonstrated above, respondent's conduct was

never determined to be "competed", and was hardly "exclusionary" in the sense of an arbitrary refusal to deal.

Petitioner may be correct in suggesting that closer scrutiny of the activities of private noncommercial associations is necessary. (P.10-11.) Many of these organizations, like professional sport leagues, have enormous commercial impact, both upon their members and participants and upon the public. Moreover, they must, in their nature, act concertedly in certain situations if their activities are to be properly structured. But therein lies potential for abuse—abuse which has been harshly dealt with both by this Court and the lower courts.

See:

United States v. International Boxing Club (1955), 348 U.S. 236;

Radovich v. National Football League (1957), 352 U.S. 445;

Washington State Bowling Proprietors Ass'n v. Pacific Lanes, Inc. (9th Cir. 1966), 356 F.2d 371, *cert. den.* (1966), 384 U.S. 963.

But it must be remembered that the Contract Bridge League is hardly the National Football League. It has neither the economic muscle nor the commercial impact of professional sports. Neither the League nor any constituent unit seek profit from their activities. Given these characteristics, a determination that the League's reasonable regulations are *per se* violations of the Sherman Act would be wholly unsupportable.

On the contrary, it is clear that not all the collective acts of private associations (even those with substantial economic consequences) offend the Sherman Act. This

Court has recognized that even group boycotts may be saved by a "justification derived from the policy of another statute or otherwise." *Silver v. New York Stock Exchange* (1963), 373 U.S. 341, 348-349 (emphasis added). Certain activities, like those of stock exchanges, must be organized and centrally governed if they are to survive at all. Collective action has been held appropriate to protect sport leagues from the pernicious influence of gambling (*Molinas v. National Basketball Ass'n.* (S.D.N.Y. 1961), 190 F.Supp. 241) and to protect the quality of the competition (*Deeren v. Professional Golfers' Ass'n.* (9th Cir. 1966), 358 F.2d 165, cert. den. (1966) 385 U.S. 845). The Court of Appeals determined the Bridge League's acts to be in that protected category—justifiable and reasonably undertaken to serve legitimate ends. The Findings of Fact, examined and sustained (A-11), admit of no other conclusion. This Court need not, and should not, review their decision.

Conclusion.

For the reasons stated above, respondent urges this Court to deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Dated: January 13, 1971.

Respectfully submitted,

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APPENDIX A.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

Bridge Corporation of America, *Appellant*, vs. The American Contract Bridge League, Inc., et al., *Appellees*. No. 23,292.

[June 25, 1970]

Appeal from the United States District Court for the Central District of California.

Before: HAMLEY and KILKENNY, Circuit Judges, and POWELL, District Judge*

POWELL, District Judge:

In 1964 Bridge Corporation of America (BCA) instituted this action against American Contract Bridge League, Inc. (ACBL) and several of its agents for relief for claimed violations of the Sherman Act, 15 U.S.C. §1—2, violations of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, 16726 and 16758, and for unlawful interference with prospective business advantage. The court below dismissed the three causes of action and this court reversed and remanded for further proceedings. 366 F.2d 779 (9th Cir. 1966).

Upon remand the case was tried first on the issue of liability. The district court concluded at the close of that trial that the plaintiff had failed to meet its burden of proof and entered judgment for the defendants. The plaintiff has again appealed.

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*The Honorable Charles L. Powell, United States District Judge for the Eastern District of Washington, sitting by designation.

Appellee, ACBL, was organized in 1937 as a non-profit corporation for the purpose of conducting and sanctioning bridge tournaments and determining the rank of bridge players by the issuance of ratings and master points. At the time this suit was commenced ACBL had approximately 185,000 members who were organized into geographical units. The units participate in over 300 sectional and regional tournaments. At these tournaments bridge players win master points for national ranking. Since bridge players compete to win master points and since ACBL is the only organization which awards master points it is without competition in the field of organized bridge tournaments. Although individual units are in many respect autonomous they are never free from the overall supervision of ACBL since it must approve unit bylaws and conditions of play before it will sanction a tournament.

By demanding uniformity in the handling of bridge competitions the ACBL has maintained the integrity of the master point system and thus has insured continued player interest in organized bridge league tournaments.

This suit grew out of a dispute concerning the use of a specialized portable digital computer system for scoring duplicate bridge tournaments.

In 1961 a representative from the technical staff of the ACBL, Col. Baldwin, wrote to the now president of BCA, Mr. Flam, about an article appearing in the New York Times on a patent application by Mr. Flam for a computerized tournament bridge scoring system. Mr. Flam testified that he recognized that in order to promote his business he would have to work through League components (units), if not the national headquarters.

In subsequent correspondence Mr. Flam said he expected to have a completed pilot model in April 1952. Col. Baldwin wrote back stating that the League would welcome a computerized scoring method at a cost comparable to the existing manual method. Following a meeting between Col. Baldwin and Mr. Flam in Houston and another in Los Angeles Mr. Flam agreed to modify his computer to the League's system approach.

In May of 1953 the modified computer was ready for initial testing and was demonstrated in small tournaments at Redlands and Riverside. Based on the success of those demonstrations Mr. Flam reached an agreement with the director of the upcoming Riverside—Redlands tournament to score their sectional. After that agreement was reached, but before the tournament was conducted, Mr. Flam wrote to Col. Baldwin suggesting a personal demonstration in Los Angeles when Col. Baldwin would be there for the summer nationals. At that time the board of directors of ACBL would be conducting their meeting in Los Angeles.

The demonstration was given and the board members were invited to attend when their meeting adjourned. The managing officer of ACBL, Mr. Landy, visited the demonstration but was only able to stay for 10 or 15 minutes. While there he learned of the contract with BCA for the upcoming Riverside—Redlands tournament. Shortly thereafter Mr. Landy called Mr. Flam and told him that the League would not sanction the Riverside—Redlands tournament if the computer was used to score. It was suggested that Mr. Flam demonstrate the computer to the technical staff and board of directors of ACBL at the fall national tournament in Florida. Mr. Flam wrote back stating that due to the expense of coming to Florida

and the time it would take from his other work he could not attend.' Mr. Flam then requested a member of the board of directors of ACBL, Mr. Andersen, to present a resolution providing for the use of his computer at sanctioned tournaments. Mr. Andersen discussed the resolution with Mr. Landy in advance of the board meeting. It was agreed between them that it would not be presented for the board's consideration.

Mr. Landy then wrote to Mr. Flam in reference to Mr. Flam's letter to Mr. Andersen and also concerning the League's position on the use of his computer. The letter was as follows:

> "Judging by your letter of August 29th to Eilif Andersen, we wasted a lot of time and you wasted a lot of money when we spoke on the phone a few weeks ago.
>
> I was particularly impressed by the sentence 'The only reason stated to me in a long-distance telephone conversation was that in the opinion of the Executive Secretary, use of the table equipment would be an inconvenience to the players.' Actually, I must have spent at least five minutes trying to explain to you that the use of your portable

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[1]The letter is in pertinent part as follows:

"We have given some thought to your suggestion that we take this matter up with the Board of Directors. Since talking with you, we realize that transporting the equipment all the way to Florida will be a substantial expense, especially considering the time that I will have to steal from my law practice. Perhaps there is some other way in which the matter can be presented. For example, Colonel Baldwin has the experience and training that might justify his appointment as a special committee of one to report to the Board of Directors based upon his personal observation of our operations. After all, the League did spend many thousands of dollars on a *survey* to see if a computer system *could* be used for scoring functions. We already *have* a computer system that should warrant some investigation."

digital computer would cause so many changes in our present procedures in conducting tournaments that the necessary difference would have to be first cleared by the National Board of Directors. I am referring, of course, to the types of supplies, the type of boards, tournament direction, the special form to be used by the players in marking the scores and the necessity for checking them before the results could be posted, the final recap sheets, etc., etc. I mentioned the fact that you are including the cost of the supplies in your price, whereas, we are now furnishing free expendable supplies to most of the tournaments in the West and almost all of them in the East; the question of how many tournament directors will be needed in addition to the computer for what number of tables, and many other problems which would have to be decided.

You again claim that the BCA system complies in every respect with part VIII of the Laws of Duplicate Bridge and with every known regulation of the American Contract Bridge League. Even if the BCA system does comply with part VIII, which it doesn't since the computer cannot be considered the director or scoring assistant as contemplated in the Laws, again I want to point out that you are referring to the International Laws of Duplicate Bridge which are intended to apply generally around the world, but they do not and cannot deprive various sponsoring organizations or national leagues of their right to adopt their own procedures for holding tournaments. The 'Laws of Duplicate Bridge' are designed to define correct procedure and to provide an adequate rem-

edy whenever a player accidentally, carelessly or inadvertently disturbs the proper course of the game, etc.' and have nothing to do with score slips, recap sheets, pencils, duplicate boards, etc. Inasmuch as it's your equipment and your proposal, the way the proposal is presented to the Board is up to you. If you think it would be too expensive and time-consuming to arrange for a trial run in one of the side sections in Miami Beach for the benefit of the Board members, we cannot and would not attempt to force you to do so. If you want to send an explanatory letter with copies of the forms and supplies proposed to be used and ask Colonel Baldwin to provide additional explanation when requested and you think he is capable of doing so to your satisfaction, that is also up to you.

I should point out that many others have been working on computer scoring and a man in New York has worked out a method which has proven very successful during several trial runs which provided unofficial scores as was done by Honeywell in Los Angeles last month. In his method, it is not necessary to transport any portable equipment, which is an advantage, of course. So, you do have competition and you might want to consider that fact when you finally decide whether or not to come to Miami Beach in November.

I still don't understand why you arranged a special showing of your equipment for the Bridge Teachers Association and invited our Board to come in as an afterthought, inasmuch as, you were planning to arrange contracts with our Units in the West to score their tournaments. I suppose it's because you fail to realize that tournament

procedures must be uniform and the rules are laid down by the National Board of Directors."

After additional correspondence Mr. Landy and Mr. Flam agreed to meet in Los Angeles. The meeting was held and Mr. Landy made suggestions to Mr. Flam for additional modification to BCA's system. Mr. Flam responded by letter stating that he could not afford to make additional modifications to the equipment on his own. He requested financing from the League or approval of his computer for sanctioned meets in order to raise the needed capital. ACBL would not agree to finance the modification nor would they permit its use for official scoring without demonstrating its use to ACBL's technical staff and board of directors. This suit was then brought.

At the close of the trial the court made the following comments:

"THE COURT: It resolves itself down to this: I don't think the defendant has ever been given a fair opportunity to deal. Now you have presented it with a revolutionary device which requires a considerable amount of revision on the part of the defendant's procedures in order to make use of this device. It has to do with the calculation or determination of these honor awards which are the essence of the defendant's system. In order to maintain the integrity of that system it is only right and proper—and they certainly have the duty—to see that any scoring device is carefully analyzed and carefully studied and that no system be adopted until it has been proven to somebody's satisfaction, to their satisfaction, reasonable satisfaction, I might say, that it can operate in a fair and just fashion.

I am not sure the evidence even establishes that the device can do the work as completely as you seem to think it can. But assuming it does do this calculation fast, in a beneficial way and with an accurate result, nevertheless the defendant's agents have to be given an opportunity to test it out and they have to be convinced that it can be used properly to produce a proper result.

I don't think you have given them an opportunity to make that full and complete test or to satisfy themselves.

You never quite got together. I don't remember that they have ever actually refused to give you an opportunity to demonstrate it. You just could never get together at a convenient time.

You have taken that refusal to review a demonstration at a time not convenient to them as a complete and unconditional refusal to do business with you. I don't interpret the evidence that way at all." (Tr. 834-35).

Appellant argues that the action of the League in refusing to sanction the Riverside-Redlands tournament if the computer was used constituted a group boycott and was therefore a *per se* violation of the Sherman Act.[2]

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[2] "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *." 15 U.S.C. §1.

"Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court." 15 U.S.C. §2.

For many years the Sherman Act was construed by the courts as prohibiting "only those contracts or combinations which 'unreasonably' restrain competition. *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1; *Chicago Board of Trade v. United States*, 246 U.S. 231." *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5 (1958).

From this standard evolved a rule of *per se* unreasonableness in certain situations.

> "[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing, *United States v. Sacony-Vacuum Oil Co.*, 310 U.S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, aff'd, 175 U.S. 211; group boycotts, *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U.S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U.S. 392." *Northern Pacific Railway Co.*, 356 U.S. at p. 5.

We do not find that the underlying considerations of the *per se* unreasonableness rule are present in this case and therefore look to the reasonableness of ACBL's action with regard to BCA. In reaching this conclusion we refer to *Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd.*, 416 F.2d 71 (9th Cir. 1969) cert. den., 396 U.S. 1062 (1970) where the court in refusing to apply the group boycott *per se* rule made these observations: "We find that in all of plaintiff's cases [same cases that BCA cites here] there was a purpose either to exclude a person or group from the market, or to accomplish some other anti-competitive objective, or both." 416 F.2d at p. 76.

The court went on to distinguish those cases and concluded that the proper approach to take was that suggested by Barber in "Refusals to Deal Under the Federal Antitrust Laws," 103 U. of Pa.L.Rev. 847 (1955). We quote from the applicable portions of that article.

> "Because all of the situations involve an agreement between two or more persons under which one or more of them agree not to deal with third persons and for that reason foreclose a part of the market to such third persons, they are all subject to scrutiny under the antitrust laws. But in the ordinary case these do not involve combining for the primary purpose of coercing or excluding; rather they involve combinations of two or more persons to further directly the business of the parties to the agreement, and the effect on third parties and on competition is indirect. The issue in these cases is not the existence or nonexistence of concerted refusal to deal, but rather

whether the purpose and effect of the operation of the contract, association, exchange or joint sales agency was such as unreasonably to exclude outsiders from participation in the trade in question. The principle of the group boycott cases—that it is prima facie unreasonable for a dominant group to combine to coerce—is not here applicable." At pages 876-77.

In our case BCA does not argue that the units of ACBL have combined with the headquarters of ACBL for the primary purpose of coercing or excluding. On the contrary, the facts show simply that the entire League operation is structured in such a manner as to promote bridge competition on a national scale. See e.g., *Deesen v. Professional Golfers' Association of America*, 358 F.2d 165, 170 (9th Cir.) cert. den., 385 U.S. 846 (1966). The effect the League might have on third parties and on competition is at best indirect.

What we can glean from the record is that the ACBL in dealing with the BCA was motivated not by any anti-competitive motive or purpose to eliminate or damage BCA, but to insure that the manner in which league bridge competition was scored would not create a situation where the integrity of the master point system, the inspiration of league tournament play, would be questioned.

Premising our decision on these facts we would be creating a harsh precedent if we automatically applied the group boycott *per se* rule. As we said in *Maple Flooring Mfrs. Ass'n v. United States*, 268 U.S. 563, 579 (1925) and quoted in *Joseph E. Seagram & Sons, Inc., supra:*

"[I]t should be remembered that this Court has often announced that each case arising under the

> Sherman Act must be determined upon the particular facts disclosed by the record, and that the opinions in those cases must be read in the light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied."

The evidence before the District Court clearly supports its judgment that the restraint imposed by ACBL on BCA was a reasonable one. The ACBL did not refuse to sanction any tournament scored by a computer but set forth reasonable conditions, based on a legitimate interest, in order to determine if BCA's computer could do the job accurately, cheaper, faster and without significantly disrupting the manner or conditions of play. BCA in dealing with ACBL did not maintain that those conditions were basically unreasonable, although they now seem to question them. BCA told ACBL that it was not financially able to meet the conditions.

The judgment of dismissal is supported by the findings of fact. An examination of the record has led us to conclude that the findings are sustained and are not clearly erroneous. Rule 52(a) Fed.R.Civ.P.

Since we find the actions of ACBL reasonable and not violative of Secs. 1 and 2 of the Sherman Act, it is unnecessary to discuss BCA's additional grounds for claimed liability. The finding of reasonableness precludes recovery under the Cartwright Act or for claimed unlawful interferences with prospective business advantage.

Affirmed.

APPENDIX B.

Findings of Fact and Conclusions of Law of the United States District Court, Central District of California.

GIBSON, DUNN & CRUTCHER, JULIAN O. VON KALINOWSKI, IRWIN F. WOODLAND, KENNETH M. POOVEY, 634 South Spring Street, Los Angeles, California 90014, 620-9300, Attorneys for Defendants.

FILED, JULY 31, 1968, CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA.

BRIDGE CORPORATION OF AMERICA, a corportation, Plaintiff, vs. THE AMERICAN CONTRACT BRIDGE LEAGUE, INC., etc., et al., Defendants.

Civil Action No. 64-897-JWC. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

THE ISSUE OF LIABILITY HAVING BEEN TRIED BY THE COURT WITHOUT A JURY, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

7. ACBL is a not-for-profit corporation organized in 1937 under the Membership Corporation Law of the State of New York. Its purposes, as set forth in its Certificate of Incorporation, are as follows:

> "(a) To promote the development of the game of bridge, without intention of pecuniary gain, and the social meeting and companionship of bridge players, and to conserve the best interests of the game of auction bridge and contract bridge

and any modifications or improvements of these games which the future may develop.

"(b) To formulate, print, publish and distribute, by sale or otherwise, rules and laws to govern all forms of these games, including tournament, duplicate and rubber games.

"(c) To conduct, license or sanction bridge competitions, and to formulate, interpret and enforce rules for the conduct of such competitions.

"(d) To determine the ranking of bridge players by the issuance of Rating and Master Points, and to conduct, license or sanction any competitions at which the requirements for eligibility shall be determined by the number of such Points held by the Participants.

"(e) To determine the eligibility of participants in these competitions, and to approve the admission of participants by registration or other means.

"(f) To constitute an authoritative national organization for the final determination of all questions and matters which may arise in the play of the games, to interpret the rules and laws, and to serve as the arbitrator of controversies on all matters directly or indirectly pertaining to the games of auction and contract bridge and any future developments of these games.

"(g) To cooperate with other bodies of similar character in other countries for mutual legislation and the conduct and government of international competitions.

"(h) To provide legislation, ranking and competition amongst players in any other card games which the League may deem worthy of such recognition.

"(i) To conduct nation-wide 'National bridge parties' with the object of realizing funds to be devoted to some humanitarian cause."

9. ACBL has more than 185,000 members in the United States, Canada, Mexico and Bermuda. The members are organized into units, which have from 50 to 6,000 members, and cover areas ranging in size from part of a city to an entire state. Persons who become members of a unit automatically become members of ACBL.

10. ACBL sponsors and conducts, or sanctions, most of the bridge tournaments in North America.

11. ACBL sponsors and conducts three national bridge tournaments each year.

12. ACBL, by means of its employees and other persons under its supervision, directs and scores its national bridge tournaments and pays fees and expenses directly to those not its employees.

13. ACBL sanctions more than five hundred (500) regional and sectional bridge tournaments each year; its regional and sectional tournaments are sponsored and conducted by its units.

14. ACBL, by means of its employees and other persons under its supervision, directs and scores its regional and sectional tournaments, and fixes the fees and expenses to be paid, either to ACBL with respect to its employees, or directly to those not its employees.

15. One of the primary purposes for ACBL's organization was to provide a uniform system for ranking tournament bridge players throughout North America. Since its inception, ACBL has awarded its "master points" to its members based upon their relative rankings in ACBL bridge tournaments.

16. ACBL cumulates and records the master points awarded to each of its members throughout the period of his membership. Periodically, ACBL reports to each member the number of master points awarded to him since the last report, and the total number awarded to him since his membership began.

17. ACBL's master point plan gives national ranking, recognition and prestige to its members who accumulate a significant number of master points.

19. The continued success of ACBL's master point plan thus depends on the maintenance of uniform conditions of play, and the use of a proven, accurate and reliable scoring system, in all ACBL bridge tournaments where master points are awarded.

28. In view of the fact that the continued success of ACBL's master point plan depends on the use of a proven, accurate and reliable scoring system, ACBL's requirement that only its standard manual scoring system can be used officially to score its bridge tournaments is reasonable.

30. In May 1963, the computer was ready to be tested, and Mr. Flam, on behalf of plaintiff, demonstrated plaintiff's scoring system in small bridge tournaments in Redlands and Riverside, California in May and June of that year. Based on those demonstrations, Mr. Flam, on behalf of plaintiff, reached an agreement with Mr. Laurin Woodruff, acting for the committee responsible for the conduct of the sectional tournament sponsored by the Riverside and Redlands units of ACBL, that subject to the approval of the chief director, plaintiff would officially score that tournament.

33. Because he had not had prior notice, defendant Landy was able to attend the demonstration for less than fifteen minutes. While he was at the demonstration, Mr. Kapp told him about plaintiff's agreement to score the Riverside-Redlands sectional tournament. Prior to this, plaintiff had informed neither defendant Landy, defendant Stoddard nor Col. Baldwin of its plans. Defendant Landy advised Mr. Kapp that plaintiff's scoring system could not be used officially to score any ACBL bridge tournament until the system had been demonstrated to and approved by the technical staff of ACBL and its Board of Directors.

35. Sometime between August 16, and August 27, 1963, defendant Landy informed Mr. Flam that plaintiff's scoring system could not be used officially to score the Riverside-Redlands sectional tournament. Defendant Landy suggested to Mr. Flam that he should demonstrate the scoring system to the technical staff and Board of Directors of ACBL by scoring a few events at the fall national tournament to be held in Florida. Since the ACBL Board of Directors meets only at national tournaments, the fall national tournament was the earliest opportunity for such a demonstration.

36. By letter of August 22, 1963 to defendant Landy, Mr. Flam refused to demonstrate plaintiff's scoring system at the fall national tournament.

37. By letter dated August 29, 1963, Mr. Flam asked defendant Andersen to introduce a resolution at the meeting of the ACBL Board of Directors to be held at the fall national tournament. In its essentials, the resolution would have given each component unit of the League unbridled discretion to arrange for the use of any scoring system at sectional and regional

tournaments, provided only that the processes of scoring complied with the "Laws of Duplicate Contract Bridge" and that the raw scores were concealed during the course of the tournament. Defendant Andersen declined to introduce the resolution at that or any other meeting of the ACBL Board of Directors.

38. By letter of September 13, 1963 defendant Landy summarized the reasons for ACBL's decision that plaintiff's scoring system could not be used officially to score the Riverside-Redlands sectional tournament, and again suggested that the system be demonstrated at the fall national tournament.

39. By letter of September 24, 1963 Mr. Flam again refused to demonstrate plaintiff's scoring system at the fall national tournament, but suggested that defendant Landy attend a demonstration in Los Angeles enroute to the Hawaii regional tournament. Defendant Landy accepted and spent a day with Mr. Flam in early November. At that time, he made suggestions to Mr. Flam for modifications to plaintiff's scoring system.

40. By letter of November 11, 1963, Mr. Flam informed defendant Landy that he could spend no more money on development of plaintiff's scoring system and that he definitely would not demonstrate the scoring system to the ACBL Board of Directors at the fall national tournament.

41. At this point, plaintiff's position was that it would not make modifications in its scoring system without either financial help from ACBL or its permission to use the unmodified scoring system officially to score 40,000 to 50,000 tables of bridge. ACBL's position was that it would not finance further development

of plaintiff's scoring system, nor would it permit its use for official scoring so long as it had not been tested and approved by the ACBL Board of Directors. This action followed.

42. As a result of the ACBL decision, plaintiff's agreement with the Riverside-Redlands sectional tournament committee was never effectuated, and plaintiff did not score that tournament, nor has plaintiff officially scored any other ACBL sectional or regional bridge tournament.

46. Since relatively unskilled and unreliable players would be assigned the tasks of posting their raw scores to plaintiff's special score cards, and detecting errors made by other players in calculating and posting their raw scores, ACBL had a reasonable basis for doubt that plaintiff's scoring system would be accurate and reliable.

47. The use of plaintiff's scoring system would entail substantial changes in the conditions of play uniformly enforced in all ACBL bridge tournaments.

48. ACBL had a reasonabe basis for concern that the doubtful accuracy and reliability of plaintiff's scoring system, and the changes entailed by its use in the conditions of play, would detrimentally affect the basis for award of master points in bridge tournaments where it was used.

49. ACBL's only purpose in requiring that plaintiff's scoring system be tested and approved by ACBL before it could be used for official scoring of ACBL tournaments, was to ensure that it was accurate and reliable, and that it could be accommodated within the conditions of play uniformly enforced in all ACBL bridge tournaments.

50. ACBL acted reasonably in requiring that plaintiff's scoring system be tested and approved by ACBL before it could be used for official scoring of ACBL bridge tournaments.

51. ACBL acted reasonably in preventing the use of plaintiff's scoring system in officially scoring ACBL bridge tournaments, so long as it had not been tested and approved by ACBL.

53. Since at least 1959, ACBL has actively sought to find a method of mechanical or electronic scoring to supplement or replace its standard manual scoring system. ACBL has negotiated, and in some cases entered into contracts with, a number of major companies, among them the Service Bureau Corporation, International Business Machines Corporation, Applied Data Research, Inc., and the Minneapolis-Honeywell Co., all directed toward that end.

54. ACBL and the individual defendants herein cooperated fully with Mr. Flam and plaintiff during the development of plaintiff's scoring system. On various occasions, Col. Baldwin, and defendants Landy and Andersen made concrete suggestions to Mr. Flam for changes in plaintiff's scoring system which would increase its accuracy and reliability, and decrease the detrimental impact of its use on conditions of play.